IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R.S.A.No.35 of 2006

Date of Decision : December 01, 2006.

Pepsu Road Transport Corporation ..... Appellant

Vs.

1. Balwant Singh through LRs :-
   (i) Manjit Kaur, Widow
   (ii) Amandeep Singh, Son
   (iii) Bhupinder Kaur, Daughter
   (iv) Gurpreet Kaur, Daughter ..... Plaintiff/ Respondents

   (impleaded vide order dated 15.11.2006 in C.M.No.10354-C of 2006)

2. Pepsu Road Transport Corporation ..... Proforma-Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Arun Nehra, Advocate
for the appellant.

Mr.Arun Chandra, Advocate
for the respondents.

* * *

P.S.Patwalia, J. :

The present Regular Second Appeal has been filed by defendant-Pepsu Road Transport Corporation against concurrent findings recorded by the trial court and the lower appellate court decreeing the suit filed by the plaintiff and holding him entitled to pension under Pepsu Road Transport Corporation Employee/Pension Gratuity & General Provident Fund Regulations 1992 (hereinafter referred to as Pension Regulations).

The substantial question of law that arises for consideration in this Regular Second Appeal is as to whether the plaintiff would be entitled for pension under the Pension Regulations or not as according to the respondents, he had failed to exercise the option for pension under the aforesaid regulations and had also not refunded the amount of advance taken by him out of the employees' share of Contributory Provident Fund.

The plaintiff who was a driver retired from the service of the appellant-Corporation on 30.11.2000 on attaining the age of superannuation. On his retirement he was only released the amount of Contributory Provident Fund but was not granted pension under the Pension Regulations. The defendants also did not pass any order withholding the pension and other benefits due to the plaintiff. The plaintiff approached the defendants time and again to grant him pension but when they did not do so he filed the present suit claiming pension, accumulated pension and other benefits under the Pension Regulations along with interest at the rate of 18% per annum for delayed payments. The appellant-Corporation contested the suit. Besides raising a plea of limitation and estoppel, on merits it was the case of the Corporation that the plaintiff had never opted for pension as per the Pension Regulations. He was therefore rightly held not entitled to pension. The plaintiff has received all his dues under the Contributory Provident Fund scheme and nothing more is due to him. It was further mentioned that the plaintiff had taken a loan of Rs.12,000/- from out of the Provident Fund out of which a sum of Rs.4,999/- was recoverable from him and hence he was not entitled to pension.

At this stage it would be appropriate to reproduce relevant provisions of the Pension Regulations of 1992 which were enforced with effect from 15.06.1992 and these provisions are as hereunder :-

> ***"Pension** : Except when the term `pension' is used in contradiction to Gratuity, Pension, includes Gratuity. The term pension includes*

compensation Pension, Superannuation Pension, Retiring Pension, Invalid Pension and Family Pension. Sub-clause (ii) of Clause (h) further provides that Pension, Gratuity and other retirement benefits will be admissible to the employees of the PRTC on government pattern. However, Ex-gratia, Leave encashment, LTC and medical allowance will not be admissible as these are not the retirement benefits. Regulation 3 provides (1) These regulations shall apply to the employees of the PEPSU Road Transport Corporation who :

(i) Were/are appointed on or after the date of issue of Regulations on whole-time and regular basis and

(ii) Were working immediately before the date of issue of Regulations and opt for these regulations.

Sub-clause (2) of Clause 3 provides that these regulations shall not apply to the employees who :

a) Opt out of these regulations.

b) Are on deputation with the Corporation.

c) Are paid out of contingencies.

d) Are work charged employees.

e) Are employed on contract basis, except when the contract provided otherwise.

f) Are re-employed after superannuation.

g) Are specifically excluded wholly or partly from the operation of these regulations; and

h) Opt for the PRTC Employees Pension/

Gratuity and Regulations General Provident Fund, 1992, but failed to refund the amount of advance taken out of the Employer's share of the Contributory Provident Fund alongwith interest thereon within the stipulated period."

After considering the aforesaid regulations the trial court decreed the suit of the plaintiff taking a view that grant of pension was fulfillment of constitutional promise and pension therefore could not be denied on technical objections. The trial court placed reliance on a Division Bench judgment of this Court in ***Smt.Usha Dogra vs. Central Bank of India*** reported as ***2002 (4) SCT 583*** and a Single Bench judgment of this Court in the case of ***Sridhar Malik vs. Haryana State Electricity Board*** reported as ***2002 (3) SCT 1096*** wherein under similar circumstances directions had been given to grant pension to the petitioners in those cases. Accordingly the trial court decreed the suit and held the plaintiff entitled to pension, commuted pension and other benefits subject to the condition that the plaintiff would refund the amount of Contributory Provident Fund (Corporation's share) along with interest at the rate of 9% per annum. This was to be done after the defendants had served a notice on the plaintiff quantifying the amount payable by him. On receipt of the notice the plaintiff would deposit the amount as also an option for receipt of pension and the Corporation would then give benefit of pension under the Pension Regulations to the plaintiff. This judgment of the trial court was affirmed by the lower appellate court.

Shri Arun Nehra, learned counsel appearing for the appellant contends that the plaintiff is not entitled for pension under the Pension Regulations as firstly he had never opted for the same by exercising a valid option. Secondly referring to clause 3 (2) (h) the learned counsel contends that he did not even deposit the balance amount of advance taken by him

from out of the Employees' share of the Contributory Provident Fund along with interest and thus was not entitled for pension on this ground also.

I however find no merit in this contention. It has come in the evidence of DW-1 Raj Kumar that notice regarding exercise of option was not served personally on the plaintiff. This is so recorded by the trial court in Para 9 of the judgment and the relevant observation is as hereunder :-

> *".....He further stated that the plaintiff is now drawing his pension which is known as CPF pension. In his cross-examination DW1 Raj Kumar admitted that notice regarding exercising the option was not served personally on the plaintiff."*

The lower appellate court also on examination of evidence concluded that the defendants had not led any cogent and convincing evidence to show that the pension scheme had been circulated amongst the employees of the Corporation and they were made to understand and note the same so as to exercise their option. The relevant observations of the lower appellate court to this effect are as hereunder :-

> *".....It was therefore, obligatory on the part of the defendants to have led some cogent and convincing evidence that the scheme of the pension under the Regulations was circulated amongst the employees of the PRTC and they were made to note the same so as to exercise the option within the specified period, in the absence of which the averments made by the plaintiff in the plaint and the same having not been controverted by the defendants and further a statement in this regard having been made by the plaintiff as PW1 in his sworn affidavit, EX.PI, cause the court to hold that*

> *the plaintiff had made exercise of the option of the pension but the defendants failed to take the necessary action on the same so as to provide the benefit of the superannuation pension as provided under Regulation 3 of the Regulations. It is also important to note that under Sub Clause (ii) of Regulation 3, the Regulations had not to be applied to the employees who opt out of these regulations. Again there is no evidence to have been led by the defendants that the plaintiff had opted out of the Regulations."*

In the face of this statement and findings I am of the opinion that since there is no evidence on the record that the pension scheme had been circulated amongst the employees and got noted from them the Corporation cannot deny the benefit of pension under the Pension Regulations to the plaintiff merely on account of the fact that he had not opted for the same. In this view of mine I am fortified by the observations made by a Division Bench of this Court in ***Ram Dia and others vs. Uttar Haryana Bijli Vitran Nigam Ltd. and another*** reported as ***2005 (4) SCT 387*** which are as hereunder :-

> *".....The learned counsel for the respondents failed to show any material that the circular dated 6.8.1993 was actually got noted in writing from the petitioners. In the absence of any such material, it can well be inferred that the petitioner had no knowledge about the options called by the respondents vide the aforesaid circular. Therefore, it is unreasonable to deny the pensionary benefits to the petitioners.*
>
> *10. Accordingly, the writ petition is*

allowed. The order at Annexure P4, dated 13.2.2004 is quashed. The respondents are directed to allow the petitioners to exercise their option in accordance with their circular dated 6.8.1993 within a period of one month of receipt of a certified copy of this order and give them the consequential benefits within two months thereafter subject to their fulfilling the conditions of eligibility for being governed under the aforesaid circular dated 6.8.1993."

Similar view has been taken by another Division Bench of this Court in ***Ram Kumar and others vs. Uttar Haryana Bijlli Vitran Nigam Ltd. and others*** reported as ***2006 (3) SCT 628*** which is as hereunder :-

"The question regarding changing the option after the time fixed has lapsed has been considered and necessary permission to change the option has been granted by this Court in other cases. A Division Bench of this Court in ***Mahinder Singh v. Executive Engineer and another, 2005 (4) SCT 633,*** *to which onoe of us (S.S.Nijjar, J.) was a member, held that unless it is established that the circular issued for exercise of option was brought to the notice of the employee he cannot be denied from exercising the same in the time merely because he did not do so immediately when the circular was issued. In the case of* ***Lalu Ram v. State of Haryana, (C.W.P.No.2476 of 1997), decided on 9.10.1997****, a Division Bench of this Court considered the case where the employee had not given his option for*

adopting the pensionary scheme and had failed to comply with the conditions imposed therein, that is, depositing the employer's share of contribution towards G.P.F. with upto date interest. It was held by this Court that the respondents therein had not placed any material on record to show that the instructions issued had been got noted in writing from the petitioner in the said case. In the absence of any such material it was held that it cannot be assumed that the petitioner while in service knew about the contests of the instructions that had been issued. It was noticed that the circular in question specifically provided that "these instructions may please be got noted from the employees and acknowledge the receipt of the letter". In ***Hakam Singh, Driver v. Executive Engineer and another, CWP No.12758 of 2000), decided on 29.5.2002,*** *another Division Bench directed the respondents to allow the petitioners therein to avail the benefit of pensionary scheme as there was no proof that they were ever served on the basis of instructions regarding switching over to the pensionary scheme. In* ***Darshan Singh v. Chief Accounts Officer, (CWP No.2402 of 1997), decided on 27.8.1997,*** *another Division Bench of this Court allowed the writ petition for computation of the service rendered by the petitioner therein towards retiral benefits. The claim of the petitioner was resisted as he had not exercised his option to claim the benefit of service*

towards pension. It was, however, held that the amount deposited by the employer from the date of the appointment of the petitioner therein till his retirement along with interest shall be refunded by the petitioner. In the case in hand also there is no material on record to show that the circulars dated 6.8.1993 (Annexure P.1) and 9.8.1994 (Annexure P.2) were brought to the notice of the petitioners. Therefore, the declining of pension scheme to the petitioners on account of the fact that they failed to exercise their option is without basis. The petitioners would, however, be required to refund the amount deposited by the employer from the date of their respective appointments till retirement along with interest."

Similar view has been taken by another Division Bench of this Court in ***Mahinder Singh v. Executive Engineer and another, 2005 (4) SCT 633, Dilwar Singh v. Haryana Power Generation Corporation Ltd. and others, 2006 (3) SCT 412*** and by a learned Single Judge in ***Sridhar Malik vs. Haryana State Electricity Board*** reported as ***2002 (3) SCT 1096.*** In view of the authoritative pronouncements referred to herein above I am of the opinion that since no evidence has been brought on record by the appellant-Corporation to show that the pension scheme had been got circulated amongst the employees and got noted from them, pension cannot be denied to the plaintiff merely on account of the fact that he had not opted under the Pension Regulations.

In the light of the aforesaid findings since the pension scheme was never circulated and got noted by the plaintiff he cannot be denied pension on account of the fact that he had not deposited the balance amount of loan taken by him from out of his Contributory Provident Fund. Had it

been brought to his notice he would certainly have deposited a sum of Rs.4,999/- outstanding against him. In any case under somewhat similar circumstances this court in the case of ***Pepsu Road Transport Corporation and another v. Sant Ram Fitter (Retd.) (RSA No.2173 of 2004, decided on 25.05.2004)*** has taken a view that rejection of the claim of plaintiff therein for pension under this very pension scheme on the ground that advance from out of GPF was not deposited by the plaintiff in the light of the fact that no notice was served on the plaintiff for the same, was arbitrary and illegal. Thus I do not find that the plaintiff can be denied the benefit of pension on this ground as well.

Even otherwise I am of the opinion that the grant of pension to the citizens and employees is fulfillment of a constitutional promise under as much as it partakes the character of public assistance in old age. The pension scheme thus fulfills this constitutional mandate. The Hon'ble Supreme Court in the case titled ***Deokinandan Prasad v. State of Bihar, AIR 1971 Supreme Court page 1409*** affirmed the decision of the Full Bench of this Court in the case of ***K.R.Erry v. State of Punjab, AIR 1967 Punjab Page 279*** holding that pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. This has been the settled legal position. The Hon'ble Supreme Court in ***Subrata Sen v. Union of India, 2001 (4) SCT 424 (SC) : 2001 (8) Supreme Court Cases 71*** observed as under :-

> *"Payment of pension does not depend upon Pension Fund. It is the liability undertaken by the Company under the Rules and whenever becomes due and payable, is to be paid. As observed in Nakara case pension is neither a bounty, or a matter of grace depending upon the sweet will of the*

> *employer, nor an ex gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who is they heyday of their life ceaselessly toiled for the employ on an assurance that in their old age they would not be left in the lurch."*

Therefore I am of the opinion that in the facts and circumstances of this case the plaintiff who is a driver in the Corporation cannot be denied the benefit of pension under the Pension Regulations.

At this stage I may also consider two other contentions raised by the learned counsel for the appellant. Learned counsel submits that the claim of the plaintiff should be dismissed on the ground of limitation. In this regard I may notice that an issue was framed as to whether the suit is barred by limitation being issue no.7. This issue was decided against the appellant by the trial court. Before the lower appellate court the findings of the trial court on this issue were not even challenged. The relevant observations of the lower appellate court are as hereunder :-

> *"No argument was raised by the Ld. Counsel for the appellants with regard to the findings returned by the Ld. Trial Court on issues Nos.3, 6 and 7. Apparently, the plaintiff being entitled to the benefit of the pension on superannuation, he had the locus-standi to file the suit. There is nothing on record to show that the plaintiff had ever foregone his right of pension on superannuation by any of his act and conduct. The cause of action to file the suit regarding the claim of the pension being recurring one it could not be argued that the suit is barred by limitation. I, therefore, affirm*

the findings of the trial Court on issues Nos.3, 6 and 7."

Even otherwise the plaintiff had retired from service on 30.11.2000. He filed the suit on 8.12.2003. The suit was filed within a period of 38 months. Thus even if the arrears of pension payable were to be curtailed to a period of three years and two months prior to the filing of the suit they would be payable from the date of superannuation of the plaintiff as the said date falls within 38 months from the filing of the suit. I thus find no merit in this contention of the learned counsel for the appellant as well.

Learned counsel for the appellant then contends that the plaintiff is estopped from filing the suit as he had already taken the Contributory Provident Fund. Again I may notice that an issue to this effect was framed by the trial court being issue no.6. The said issue was decided against the appellant by the trial court. Before the lower appellate court no argument was raised on this issue. Even otherwise I am of the opinion that the plaintiff cannot be denied the benefit of pension under the Pension Regulations merely on this ground. The trial court has already given a direction that the plaintiff would refund the employees' share of the Contributory Provident Fund with 9% interest. To substantiate this plea learned counsel for the appellant has relied upon a judgment of this Court in ***Executive Engineer, Haryana State Electricity Board vs. Dharam Singh and others, 2005 (2) RSJ 364***. I have gone through the said judgment. The controversy in that case primarily was as to whether the employees could be allowed to shift from the EPF Scheme to the pension scheme of the Board. The Board in that case had given opportunity to all the members to shift to the said scheme up to a particular date in the year 1988. The petitioners therein had not opted to shift. The judgment records that as hereunder :-

".....The petitioner should have well opted for the same at the relevant time and deposited the entire contribution of the Board towards EPF,

> *thus, facilitating the respondent-Board to give him the pensionary benefits. He did not do so while in service and continued to enjoy the benefit as it was available to him at that time. The petitioner even got all the benefits of EPF Scheme encashed consequent upon his retirement on 31.8.1991 on attaining the age of superannuation. He made representation for switching over from EPF Scheme to GPF Scheme for the first time on 18.6.1997 wherein, he had also shown his willingness to deposit the entire amount of EPF."*

It was in those peculiar facts and circumstances of that case that relief was denied to the employees therein. The factual position in this case is totally different. Thus I find no merit in this contention raised by the learned counsel as well.

For the reasons recorded above the question posed at the outset is answered against the appellant-Corporation and in favour of the plaintiff. The present Regular Second Appeal is dismissed with no order as to costs. The plaintiff would be entitled to pensionary benefits in terms of the orders passed by the trial court. The notice for repayment of the amount of Contributory Provident Fund (Corporation share) along with 9% interest would now be issued within one month from the date of receipt of a certified copy of this judgment. Subject to this modification, the decree of the trial court stands affirmed.

December 01, 2006 (P.S.Patwalia)
monika Judge